IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1285 (MS) OF 2004

Smt. Ganeshi Devi,
W/o late Padam Singh,
R/o Naugaon, Patwari Circle-Latuger,
Tehsil-Gairsen, District-Chamoli. .....Petitioner.

Vs.

1. Civil Judge (Junior Division),
   Chamoli Camp, Karnaprayag,
   District-Chamoli.
2. Collector, Chamoli.
3. Dev Singh, S/o Kundan Singh,
   R/o Village Naugaon/Dhamdev,
   Patwari Circle-Latuger, Tehsil-Gairsen,
   District-Chamoli. .....Respondents.

Date: 08.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri N.S. Negi, Advocate for the petitioner and standing Counsel for the respondents no.1 and 2.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 23.11.2004 passed in Execution Proceedings 01/2004 Dev Singh Vs. Ganeshi Devi.

3. The execution proceedings are pending for execution of the order dated 29th October, 2002 and as such the executing court is to execute the decree and shall determine all the question while executing the decree as will appear from the language of Section 47 of the C.P.C. The same is quoted below:-

> ***"47. Questions to be determined by the Court executing decree.*** *– (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*
>
> *(2)[***]*
>
> *(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determind by the Court.*
>
> *[Explanation. I.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.*
>
> *Explanation. II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*
>
> *(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]"*

4. As will appear from the order itself that the executing court has passed the order in compliance of the decree dated 29.10.2002.

5. In view of the aforesaid, the order dated 23.11.2004 requires no interference under Article 226/227 of the Constitution of India. However, it will be open for the petitioner to take appropriate steps against the judgment and decree dated 29.10.2002.

6. Writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

08.08.2006

Rathour